

REMARKS

Claims 1,4-12, 14-41 are pending. Claims 8-11, 15 and 19 are withdrawn. Claims 2,3,13 are canceled.

Support for the amendments to claims 1 and 41 are found at paragraph 0047, page 7, lines 24-27 of the as-filed specification.

Claims 1, 4, 5, 17, 18, 23, 24, 26, 27, 29 and 30 are rejected under 35 USC § 102(b) as being anticipated by Gan (U.S. Patent 5,964,807).

In the October 2008 Amendment, the Applicants defined a strip to be a substantially flat structure wherein the thickness is at least one order of magnitude lower than either the width or length, and argued that Gan does not disclose a strip.

In the Jan. 23, 2009 Office Action, the Examiner responded that "Applicants are relying on limitations not in the presently examined claims."

In this RCE, Applicants have amended the claims to positively recite a substantially flat structure wherein the thickness is at least one order of magnitude lower than either the width or length.

Therefore, the anticipation rejection under Gan should be withdrawn.

Claims 1, 4-7, 17 and 26 are rejected under 35 USC §102(e) as being anticipated by Bilbo (U.S. 2007/0250177).

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In this RCE, Applicants have amended the claims to positively recite a substantially flat structure wherein the thickness is at least one order of magnitude lower than either the width or length.

Moreover, it is clear from the text of Bilbo that Bilbo did not contemplate any folding of the ICL in order to create an annular plug. For example, Example 13 of Bilbo, entitled "Use of a Bioengineered Flat Sheet ICL Prosthesis to Repair the Annulus Fibrosis After Partial Discectomy" states, in part: "... To apply the bioengineered flat sheet ICL prosthesis, it is first trimmed into three or four smaller pieces and then inserted into the annular hole opening." Similarly, Example 15, entitled "A Time Course Study Using Bioengineered Flat Sheet ICL Prosthesis in Annulus Fibrosus Repair of Pigs", states, in part, that "A surgical annular defect are created in each exposed disc. Several pieces of connective tissue construct, each about 2 to 5 mm in diameter, are implanted into two defects of each animal." Therefore, in both of its pertinent examples, Bilbo relies upon using multiple pieces to create an effective thickness in its implant (and not folding), and so teaches away from the present invention.

Therefore, the anticipation rejection under Bilbo should be withdrawn.

Claims 1, 4-7, 12, 14, 16-18 and 20-41 are rejected under 35 USC § 103(a) as being unpatentable over Gan (U.S. Patent 5,964,807), in view of Bilbo (U.S. 2007/0250177), Li (U.S. 6,764,514), Lim (WO 03/51239), and Mochlenbruck (U.S. Patent 6,723,335).

The deficiencies of Gan and Bilbo have been discussed above. Neither Li, Lim nor Mochlenbruck cure these deficiencies. Li has been cited only for its material manipulation disclosure. Lim has been cited only for its GDF-5 disclosure. Mochlenbruck has been cited only for its autologous bone marrow disclosure.

Moreover, in providing reasoning for the obviousness rejection, the examiner stated that "One of ordinary skill in the art would have clearly optimized the shape of the repair material so as to correlate as closely as possible with the defect site to be repair". Applicant respectfully submits that since the defect site is substantially cylindrical, the Examiner's logic would arrive at a cylindrical repair material, not a strip having a length, a width, and a thickness, wherein the

thickness is at least one order of magnitude lower than either the width or length. Thus, the Examiner's logic teaches away from the present invention.

Moreover, Gan teaches that its preferred embodiment comprises sintered bioactive glass. As such, it is not readily amenable to folding. Therefore, Gan teaches away from the present invention.

Therefore, this obviousness rejection should be withdrawn.

In addition, please provide any additional extensions of time which may be necessary and charge any fees, such as for presentation of extra claims, which may be due to Deposit Account No. 10-0750, but do not include any payment of issue fees. Should there be any remaining or further questions, the Examiner is requested to contact the undersigned directly.

Respectfully submitted,

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